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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,348	02/28/2002	Amanda Sara Hewett	602-1562	7081

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EXAMINER

SWIATEK, ROBERT P

ART UNIT PAPER NUMBER

3643

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/070,348

Applicant(s)

HEWETT ET AL.

Examiner

Robert P. Swiatek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 45 is/are allowed.
- 6) ☒ Claim(s) 40-44 and 46-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11-12-04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 55 is rejected under 35 U.S.C. 102(b) as being anticipated by Nelson et al. (US 4,494,652). The Nelson et al. patent discloses a container system in the form of an outer container 12 and an inner container 14. The mouth 82, 84 of the inner container is disposed adjacent to and below the neck 26 of the outer container. Column 2, lines 58, 59, of Nelson et al. notes that the outer container is formed from a translucent red material. The Nelson et al. container could be employed as “an item of furniture” in a cage in that an animal could sit or stand atop it. A rodent would perceive the translucent red material as substantially dark or opaque.

Claim 55 is rejected under 35 U.S.C. 102(b) as being anticipated by Lau (US 6,328,385 B1). The inflatable chair 10 of Lau includes an outer chamber 12 as well as inner support sections 20, 24, 26 made from a colored or transparent vinyl or plastic material. The Lau inflatable chair is considered to be an item of cage furniture in that it could be placed within a cage for use by an animal. In a darkened environment, the Lau chair correspondingly would appear dark or opaque to a rodent. Moreover, light striking the Lau chair from an angle would

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create shadows on the chair due to the arm sections 30, 32 and back 18, causing the chair to appear darkened—at least in part—to a rodent.

Claims 40-44, 46-54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. In claims 40-44, 46-51, 54, each occurrence of the phrase “cage or an item of cage furniture” is considered to be unclear and alternative in nature—the conjunction *or* is not deemed to link substantially equivalent elements. In claim 46, “said coloured material” lacks a prior antecedent basis with respect to claim 45; in claim 51, line 2, use of the expression “and/or” is unclear and does not properly limit the scope of the claim.

This application does not contain an abstract of the disclosure. An abstract on a separate sheet is required. No abstract accompanied the amendment filed 22 September 2003 (or at least it wasn't scanned into the case file) or appears on the cover sheet filed 28 February 2002.

Claims 40-44, 46-54 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Applicants' arguments filed 12 October 2004 have been fully considered but they are not persuasive. Claims 40-55 are not believed allowable for the reasons set forth above.

The patents to Fleming Jr. et al. (US 4,852,321), Kooji et al. (US 5,904,019), and Blum et al. (US 6,234,115 B1) have been cited to provide additional examples of transparent and translucent structures.

Summary: Claims 40-44, 46-55 have been rejected; claim 45 has been allowed.

RPS: ©703/308-2700
7 January 2005

Robert P. Swiatek
ROBERT P. SWIATEK
PRIMARY EXAMINER
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